
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUE H. HALL,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF AND APPENDIX FOR THE APPELLEE

FILED

OCT 17 1966

WM. B. LUCK, CLERK

J. WILLIAM DOOLITTLE,
Acting Assistant Attorney General,

MANUEL L. REAL,
United States Attorney,

MORTON HOLLANDER,
Attorney,
Department of Justice,
Washington, D. C. 20530.

NOV 4 1966

I N D E X

	<u>Page</u>
JURISDICTIONAL STATEMENT -----	1
FACTS -----	2
STATUTE INVOLVED -----	3
QUESTION PRESENTED -----	4
SUMMARY OF ARGUMENT -----	4
ARGUMENT -----	5
I. SINCE APPELLANT'S INJURIES, INCURRED GOING TO WORK ON A BUS PROVIDED BY HER EMPLOYER, WERE SUSTAINED "WHILE IN THE PERFORMANCE OF HER DUTY", HER FEDERAL TORT CLAIMS ACT SUIT IS BARRED BY THE FECA -----	5
A. The exclusive remedy for a federal employee injured while in the per- formance of her duty is that provided for by the FECA. -----	5
B. Appellant's injuries were sustained "while in the performance of her duty" -----	6
II. THIS COURT SHOULD AFFIRM THE DISMISSAL OF THE COMPLAINT AND SHOULD NOT STAY PROCEEDINGS PENDING FURTHER CONSIDERATION OF APPELLANT'S RECENTLY FILED CLAIM FOR BENEFITS UNDER THE FECA -----	12
CONCLUSION -----	13
APPENDIX -----	1a

CITATIONS

Cases:

Blum, Bernard D., In the Matter of, 1 E.C.A.B. 1 (1947) -----	6
Cardillo v. Liberty Mutual Insurance Co., 330 U.S. 469 (1947) -----	8, 9, 10

	<u>Page</u>
City and County of San Francisco v. Industrial Acc. Comm'n, 61 Cal. App. 2d 248, 142 P. 2d 760 (1943) -----	8
Desousa v. Panama Canal Co., 202 F. Supp. 22 (S.D. N.Y., 1962) -----	9
Guarantee Ins. Co. v. Industrial Acc. Comm'n, 97 Cal. App. 2d 46, 217 P. 2d 51 (1950) -----	7
Gunston v. United States, 235 F. Supp. 349, aff'd 358 F. 2d 303 (C.A. 9, 1966) -----	6, 13
Hall, Elaine M., Adm'x of the Estate of Jewel P. Young v. United States (S.D. Calif. C.D., Civ. No. 64-1589-TC, 1965) -----	11
Harlan v. Industrial Acc. Comm'n, 194 Cal. 352, 228 Pac. 654 (1924) -----	7
Johansen v. United States, 343 U.S. 427 (1952) ----	6
Liberty Mutual Insurance Co. v. Gray, 137 F. 2d 926 (C.A. 9, 1943) -----	7, 8
Mickler, Helen K., In the Matter of, 15 E.C.A.B. 392 (1964) -----	6
Patterson v. United States, 359 U.S. 495 (1959) ---	6
Peski v. Todd & Brown, Inc., 158 F. 2d 59 (C.A. 7, 1946) -----	7
Posegate v. United States, 288 F. 2d 11 (C.A. 9, 1961), certiorari denied, 368 U.S. 832 -----	6
Shreve v. Hot Shoppes, Inc., 184 F. Supp. 436 (D.D.C., 1960), aff'd 292 F. 2d 761 (C.A.D.C., 1961) -----	7
Soderman v. United States, 313 F. 2d 694 (C.A. 9, 1963), certiorari denied 372 U.S. 968 -----	6, 13
Somma v. United States, 283 F. 2d 149 (C.A. 3, 1960) -----	12
Thol v. United States, 218 F. 2d 12 (C.A. 9, 1954)-	6

	<u>Page</u>
Vandiver, Harold, In the Matter of, 4 E.C.A.B. 195 (1951) -----	6
Weyerhaeuser S.S. Co. v. United States, 372 U.S. 597 (1963) -----	6
Wiley, Lillie J., In the Matter of, 6 E.C.A.B. 500 (1954) -----	6

Statutes:

Federal Employees' Compensation Act, 5 U.S.C. 751 <u>et seq.</u> :	
5 U.S.C. 751 -----	1, 5
5 U.S.C. 751(a) -----	3
5 U.S.C. 757(b) -----	3, 4
5 U.S.C. 793 -----	13
Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 <u>et seq.</u> -----	1
Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, <u>et seq.</u> -----	7
28 U.S.C. 1291 -----	1
Workmen's Compensation Law of the District of Columbia, D.C. Code, Title 36, Sec. 501 (1961 ed.) -----	9

Miscellaneous:

1 <u>Larson, Workmen's Compensation</u> 279, 282 (sec. 17.10)(1965 ed.) -----	7, 8
--	------

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21229

SUE H. HALL,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF AND APPENDIX FOR THE APPELLEE

JURISDICTIONAL STATEMENT

Plaintiff brought this action, in the United States District Court for the Southern District of California, seeking damages from the United States under the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 et seq. The district court granted the Government's motion to dismiss for lack of jurisdiction on the ground that plaintiff's exclusive remedy was under the Federal Employees' Compensation Act, 5 U.S.C. 751 et seq. (hereinafter referred to as FECA). The jurisdiction of this Court to hear the present appeal from that dismissal is based on 28 U.S.C. 1291.

FACTS

In her complaint in this Federal Tort Claims Act action, plaintiff, a civilian employee of the Army on her way to work, alleged that she was injured when the Army bus in which she was then riding collided with a tractor-trailer. Alleging further that the accident was caused by the negligence of the driver of the Army bus, she sought approximately \$355,000 in damages.

In its answer, the Government raised the affirmative defense that the district court had no jurisdiction since the action was barred by the FECA. The Government also moved to dismiss, or in the alternative for summary judgment, on the ground of lack of jurisdiction.

In opposition to the Government's motion, appellant submitted an affidavit to the district court. Her affidavit admitted that she was employed as a nurse at Fort Irwin, California, and that "the accident occurred while on the way to work" in the Army bus. She resided in Barstow, California, which is approximately 35 miles away from Fort Irwin. She frequently rode to and from work on a bus owned and operated by the United States Army; however, there was no requirement that she must ride the bus. The bus was available to anyone who wished to use it, although it was primarily used by military and civilian employees of Fort Irwin. On the morning bus which left Barstow at 6:15 a.m. for Fort Irwin and on the afternoon bus

which left Fort Irwin at 4:30 p.m. for Barstow, a 25 cent fee was charged. On the night-time runs, on which Mrs. Hall rode since she worked the night shift, no fee was ever charged. On November 24, 1963, Mrs. Hall boarded the bus for Fort Irwin at Barstow. At approximately 10:36 p.m. on the public highway 30 miles from Fort Irwin, the bus was involved in an accident, causing the injuries which led to the filing by Mrs. Hall of the present Federal Tort Claims Act suit against the United States.

On August 23, 1965, the district court granted the Government's motion to dismiss the complaint for lack of jurisdiction. From this order of dismissal appellant noted an appeal on October 21, 1965. Thereafter, appellant on May 27, 1966, filed an application with the U.S. Department of Labor for administrative compensation under the FECA. That application is currently pending.

STATUTE INVOLVED

5 U.S.C. 751(a) and 757(b) of the Federal Employees' Compensation Act provide as follows:

5 U.S.C. 751(a):

(a) The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death.

(b) The liability of the United States or any of its instrumentalities under sections 751--756, 757--781, 783--791 and 793 of this title or any extension thereof with respect to the injury or death of an employee shall be exclusive, and in place, of all other liability of the United States or such instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and anyone otherwise entitled to recover damages from the United States or such instrumentality, on account of such injury or death, in any direct judicial proceedings in a civil action or in admiralty, or by proceedings, whether administrative or judicial, under any other workmen's compensation law or under any Federal tort liability statute: Provided, however, That this subsection shall not apply to a master or a member of the crew of any vessel.

QUESTION PRESENTED

Whether the district court properly dismissed plaintiff's complaint under the Federal Tort Claims Act in view of the fact that the Federal Employees' Compensation Act provides the exclusive remedy against the United States for a federal employee injured while in the performance of his duties.

SUMMARY OF ARGUMENT

The Federal Employees' Compensation Act is the exclusive remedy of an employee of the United States injured "while in the performance of his duty". Mrs. Hall clearly was injured "while in the performance of her duty" within the meaning of the FECA, the workmen's compensation act for federal employees. It is settled by uniform judicial decisions that an employee is deemed to be acting within the course or performance of his

duties if he is injured while riding to work in a vehicle under the control of the employer, or where there is an implied contract that the employer furnish transportation. Here, the United States, as employer, did furnish a vehicle under its control to transport Mrs. Hall to work, and there was an implied contract that it furnish transportation. Moreover, FECA coverage of the present case is confirmed by the administrative award of benefits under the FECA to the estate of Jewel Young, a co-employee of Mrs. Hall at Fort Irwin, who was killed riding to work on the same Army bus in the same accident which caused Mrs. Hall's injuries. Since FECA coverage thus existed here, the district court properly held that it had no jurisdiction to entertain Mrs. Hall's tort action. Furthermore, this being a case where FECA coverage is clear, no purpose would be served by this court granting appellant a stay so as to enable the administrative agency to make the primary determination of coverage.

ARGUMENT

I. SINCE APPELLANT'S INJURIES, INCURRED GOING TO WORK ON A BUS PROVIDED BY HER EMPLOYER, WERE SUSTAINED "WHILE IN THE PERFORMANCE OF HER DUTY", HER FEDERAL TORT CLAIMS ACT SUIT IS BARRED BY THE FECA.

A. The exclusive remedy for a federal employee injured while in the performance of her duty is that provided for by the FECA. The Federal Employees' Compensation Act, 5 U.S.C. 751 et seq., establishes a specialized and comprehensive compensation scheme for a federal government employee who sustains

a personal injury "while in the performance of his duty." Where an injury to a federal employee is within the coverage of the FECA, no action based upon that injury may be maintained under the Federal Tort Claims Act or under any other federal tort liability statute. The FECA remedy is exclusive. E.g., Johansen v. United States, 343 U.S. 427 (1952); Patterson v. United States, 359 U.S. 495 (1959); Weyerhaeuser S.S. Co. v. United States, 372 U.S. 597, 601 (1963); Thol v. United States, 218 F. 2d 12 (C.A. 9, 1954); Posegate v. United States, 288 F. 2d 11 (C.A. 9, 1961), certiorari denied, 368 U.S. 832; Soderman v. United States, 313 F. 2d 694 (C.A. 9, 1963), certiorari denied 372 U.S. 968; Gunston v. United States, 235 F. Supp. 349, aff'd 358 F. 2d 303 (C.A. 9, 1966). The critical question therefore is whether Mrs. Hall's injuries come within the coverage of the FECA; that is, whether her injuries were sustained "while in the performance of her duty."

B. Appellant's injuries were sustained "while in the performance of her duty". A long line of judicial decisions make it clear that Mrs. Hall was acting "while in the performance of her duty". "While in the performance of her duty" is, of course, synonymous with the phrase in the typical workmen's compensation statute, "arising out of and in the course of employment".^{1/} The general rule in workmen's compensation law

^{1/} The U.S. Department of Labor has consistently held that "while in the performance of his duty" in the FECA is synonymous with "arising out of and in the course of employment". See, e.g., In the Matter of Bernard D. Blum, 1 E.C.A.B. 1, 2 (1947); In the Matter of Harold Vandiver, 4 E.C.A.B. 195, 196 (1951); In the Matter of Lillie J. Wiley, 6 E.C.A.B. 500, 502 (1954); In the Matter of Helen K. Mickler, 15 E.C.A.B. 392 (1964).

is that "if the trip to and from work is made in a truck, bus, car or other vehicle under the control of the employer, an injury during that trip is incurred in the course of employment" for workmen's compensation benefit purposes. 1 Larson, Workmen's Compensation 279 (sec. 17.10)(1965 ed.). E.g., Liberty Mutual Insurance Co. v. Gray, 137 F. 2d 926 (C.A. 9, 1963); Peski v. Todd & Brown, Inc., 158 F. 2d 59 (C.A. 7, 1946); Shreve v. Hot Shoppes, Inc., 184 F. Supp. 436 (D.D.C., 1960), aff'd 292 F. 2d 761 (C.A.D.C., 1961); Guarantee Ins. Co. v. Industrial Acc. Comm'n, 97 Cal. App. 2d 46, 217 P. 2d 51 (1950); Harlan v. Industrial Acc. Comm'n, 194 Cal. 352, 228 Pac. 654 (1924).

In Liberty Mutual Insurance Co. v. Gray, 137 F. 2d 926 (C.A. 9, 1943), an employee was returning to his work site, after a day off, in a truck hired by his employer for the purpose of transporting his employees to the work site without charge. The truck was involved in an accident, and the employee was injured. In an action under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., closely analagous to the ^{2/}FECA, this court held that the employee could recover. The

^{2/} The Longshoremen's and Harbor Workers' Compensation Act authorizes compensation benefits if the employee suffers an injury "arising out of and in the course of employment".

court at 137 F. 2d 928 affirmed the following finding of the Commissioner:

"Claimant herein was in the course of returning to work after a holiday in Honolulu and using a conveyance provided by the employer for such purpose. Therefore, the injury arose out of and in the course of employment."

Appellant suggests a different result is warranted here because any member of the public could ride the Army buses which were not restricted to Fort Irwin employees. But the underlying reason for employer liability under compensation acts where he provides the transportation to and from work is that he has "expanded the range of the employment and the attendant risks". 1 Larson, supra, at 282. Thus, the employee, because of the fact of his employment, can be hurt through the action of his employer, whether on the job or on the employer's bus. And it makes no difference, therefore, that non-employees are riding on the employer's conveyance, for the employee is just as much exposed to these risks whether or not he is sharing his ride with a non-employee. E.g., City and County of San Francisco v. Industrial Acc. Comm'n, 61 Cal. App. 2d 248, 142 P. 2d 760 (1943).

There is an additional and independent reason showing that Mrs. Hall's injuries must be viewed as having occurred in the performance of her duty. In Cardillo v. Liberty Mutual Insurance Co., 330 U.S. 469 (1947), the employee was driving home from work, driving his own car on the public highway, when

he was injured in an accident. The Deputy Commissioner of the United States Employees' Compensation Commission held that he could recover under the Longshoremen's and Harbor Workers' Compensation Act.^{3/} An action was then brought in the courts to set aside the order. The Supreme Court held that the district court properly dismissed the complaint because the employer had contracted to and did furnish or provide transportation to and from work.

The situation in the present case corresponds exactly to that in Cardillo. Although there was no express contract that the United States furnish Mrs. Hall transportation to Fort Irwin, such a contract may be implied. The Army was not providing the bus service in order that the Barstow area have public transportation.^{4/} It is significant that the only day time runs of the Army bus mentioned in Mrs. Hall's affidavit were the Barstow-Fort Irwin run leaving Barstow at 6:15 a.m. and the Fort Irwin-Barstow run leaving Fort Irwin at 4:30 p.m. Quite obviously, those runs were scheduled to bring Fort Irwin employees to and from work at the proper time. Although

^{3/} The Longshoremen's and Harbor Workers' Compensation Act has been adopted as the Workmen's Compensation Law of the District of Columbia, D.C. Code, Title 36, Sec. 501 (1961 ed.).

^{4/} The district court case of Desousa v. Panama Canal Co., 202 F. Supp. 22 (S.D. N.Y., 1962), relied on by appellant (p. 9 of her brief) is thus not in point, since the plaintiff in that case was traveling to work on a public transportation system.

Mrs. Hall does not specify the times of the night-time runs, even more clearly they were designed to bring Fort Irwin's employees to and from Fort Irwin, for those runs were free of charge. While anyone could ride the buses, Mrs. Hall admits that they were used primarily by civilian and military employees of the United States. It is apparent that the only reason the United States was supplying the bus service was to bring Mrs. Hall and other civilian and military employees needing transportation to and from their jobs at Fort Irwin. And it is equally clear that the United States was furnishing the buses for the same reason that the employer in Cardillo was providing such service. Indeed, the description the Court gave of the job location in Cardillo exactly describes the present case:

There was also evidence that the distant location of the Marine Base project, the hours of work and the inadequacy of public transportation facilities all combined to make it essential, as a practical matter, that the employer furnish transportation in some manner if employees were to be obtained for the job. This was not a case of employees traveling in the same city between home and work. Extended cross-country transportation was necessary. And it was transportation of a type that an employer might fairly be expected to furnish. 330 U.S. at 484.

"Each employment relationship must be perused to discover whether the employer, by express agreement or by course of dealing, contracted to and did furnish this type of transportation."

Cardillo v. Liberty Mutual Insurance Co., supra, at 480. Here

it is clear that by "course of dealing" the Government contracted to furnish bus transportation to Mrs. Hall whenever she desired it to go to and from work.

Moreover, a recent decision of the Department of Labor under the FECA involving another Fort Irwin employee in the same accident as that which injured Mrs. Hall, still further confirms the view that Mrs. Hall was injured "while in the performance of her duty."

Jewel P. Young, a resident of Barstow, was a telephone operator at Fort Irwin. On November 24, 1963, she was riding to Fort Irwin on the same bus with Mrs. Hall. As a result of the accident, Mrs. Young was killed. Mrs. Young's administratrix brought suit against the Government under the Federal Tort Claims Act in Elaine M. Hall, Adm'x of the Estate of Jewel P. Young v. United States, (S.D. Calif. C.D., Civ. No. 64-1589-TC, 1965). Judge Clark granted the Government's motion for summary judgment on the ground that the plaintiff's exclusive remedy was under the FECA. (App.1a-3a). Mrs. Young's administratrix then brought an administrative claim for benefits under the FECA. The Department of Labor awarded benefits (App.5a,6a),thereby determining that Mrs. Young's injuries were incurred "while in the performance of her duty". Since Mrs. Young's estate received benefits, it is thus clear that Mrs. Hall, being injured under exactly the same circumstances, was also injured "while in the performance of her duty".

II. THIS COURT SHOULD AFFIRM THE DISMISSAL
OF THE COMPLAINT AND SHOULD NOT STAY
PROCEEDINGS PENDING FURTHER CONSIDERATION
OF APPELLANT'S RECENTLY FILED CLAIM FOR
BENEFITS UNDER THE FECA.

If this were a case where it were not clear whether FECA coverage existed, we would have no objection to appellant's request for alternative relief; namely, that this court stay proceedings until appellant is notified of the administrative decision on her pending claim under the FECA. This was the procedure followed in Somma v. United States, 283 F. 2d 149 (C.A. 3, 1960). The court there acted on the theory that it should stay judicial proceedings until the administrative body determined whether the injuries had been sustained in the performance of duty for the purpose of FECA coverage. But here there is no need for such a stay, for in light of the judicial decisions and the Department of Labor's action in granting relief to the estate of Jewel Young, Mrs. Hall's fellow passenger, there is no doubt that Mrs. Hall's injuries were "in the performance of her duty" and hence fall within the scope of the FECA.

Moreover, appellant should not now be allowed to contend that a stay should be granted. The accident occurred in 1963. But it was not until May 1966 that she filed a claim under the FECA.

Finally, we want to note that a stay is not warranted in order to see if the Department of Labor decides on the merits

actually to make an award of monetary benefits to Mrs. Hall.

As we have shown above, it is clear that Mrs. Hall was injured within the performance of her duty, and hence falls within the scope of the FECA. Once an employee is within the coverage of the FECA, sole jurisdiction of the claim rests with the Department of Labor, and the question of the extent of monetary benefits to be awarded, if any, rests with the exclusive determination of the Secretary of Labor.^{5/} This court has recently so held. Gunston v. United States, 235 F. Supp. 349 (N.D. Cal., 1964), aff'd 358 F. 2d 303 (C.A. 9, 1966); Soderman v. United States Civil Service Commission, 313 F. 2d 694 (C.A. 9, 1963), certiorari denied 372 U.S. 968.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

J. WILLIAM DOOLITTLE,
Acting Assistant Attorney General,

MANUEL L. REAL,
United States Attorney,

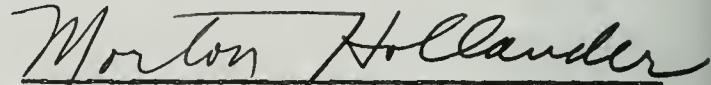
MORTON HOLLANDER,
Attorney,
Department of Justice,
Washington, D. C. 20530.

5/ 5 U.S.C. 793 provides in part:

* * * The action of the Secretary or his designees in allowing or denying any payment under sections 751--756, 757--781, 783--791 and 793 of this title shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action. * * *

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



MORTON HOLLANDER,
Attorney,
Department of Justice,
Washington, D. C. 20530.

A P P E N D I X

TABLE OF CONTENTS

Page

1. Judgment in Elaine M. Hall, Adm'x of the Estate of Jewel P. Young v. United States -----	1a
2. Findings of Fact and Conclusions of Law in Elaine M. Hall, Adm'x of the Estate of Jewel P. Young v. United States -----	2a-3a
3. Letter from Bureau of Employees' Compensation, with enclosures:	4a
a. Letter dated July 18, 1966, signed by A. B. Schroeder -----	5a
b. Letter dated June 9, 1966, signed by A. B. Schroeder -----	6a
c. Letter dated March 24, 1966, signed by Arthwell C. Hayton -----	7a
d. Form CA-2, dated May 2, 1966, signed by Camilla C. Nelson -----	8a
e. Form CA-3, dated May 2, 1966, signed by Camilla C. Nelson -----	9a
f. Form CA-5, dated March 14, 1966, signed by Elaine M. Hall -----	10a-11a



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

ELAINE M. HALL, as Administratrix
of the Estate of JEWEL P. YOUNG,
Deceased,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL NO. 64-1589-TC

JUDGMENT

Defendant's motion for summary judgment having come on for hearing on November 15, 1965, and the Court having made its Findings of Fact and Conclusions of Law, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the within action shall be, and hereby is, dismissed.

DATED: This 15th day of November, 1965.

/s/ Thurmond Clarke
United States District Judge

[CAPTION OMITTED]

FINDINGS OF FACT AND CONCLUSIONS OF LAW
(Civ. No. 64-1589-TC)

This cause having come on for hearing on November 15, 1965, on defendant's motion for summary judgment, the plaintiff appearing by her attorneys, Hayton & Whitlock by Milton C. Dawson, Esq., the defendant appearing by Manuel L. Real, United States Attorney, Frederick M. Brosio, Jr., Assistant U. S. Attorney, Chief of Civil Division, and William B. Spivak, Jr., Assistant U. S. Attorney, by William B. Spivak, Jr., Esq.; and the Court having read the written briefs presented by counsel, having heard the oral argument of counsel, and being fully advised, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I.

On November 18, 1964, plaintiff filed the within action for damages for wrongful death under the Federal Tort Claims Act.

II.

On or about November 24, 1963, decedent, Jewel P. Young, was a civil service employee of the defendant, United States of America, in the position of a telephone operator at Headquarters, United States Army Armor and Desert Training Center, Fort Irwin, California.

III.

At the time of the collision complained of in plaintiff's Complaint, decedent, Jewel P. Young, was riding on a United States Army bus on her way to work.

IV.

Decedent, Jewel P. Young, was riding on said United States Army bus because of the fact of her employment.

V.

Any conclusion of law set forth in the foregoing findings of fact shall be deemed incorporated in the conclusions of law.

CONCLUSIONS OF LAW

I.

Plaintiff is subject to the Federal Employees Compensation Act, Title 5, U.S.C., §§ 751-803(a).

II.

Plaintiff's remedy under the Federal Employess Compensation Act is exclusive. This Court has no jurisdiction to award relief under the Federal Tort Claims Act. Title 5, U.S.C., § 757(b).

III.

Judgment should be entered dismissing the within action.

IV.

Any finding of fact stated in these conclusions of law is hereby adopted as a finding of fact.

DATED: November 15, 1965.

/s/ Thurmond Clarke
United States District Judge

U.S. DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
WASHINGTON, D.C. 20211

October 5, 1966

In Reply Refer to File 1

A13-240628

Your Ref: JWD:MH:REK
157-12-1337

Mr. J. William Doolittle, Acting Assistant
Attorney General, Civil Division
United States Department of Justice
Washington, D.C. 20530

Re: Sue H. Hall v. United
States (C.A. 9, No.
21229).

Dear Mr. Doolittle:

In keeping with your request of October 5, 1966, I am enclosing
copies of the following:

- 1) Letter dated July 18, 1966, signed by A. B. Schroeder.
- 2) Letter dated June 9, 1966, signed by A. B. Schroeder.
- 3) Letter dated March 24, 1966, signed by Arthwell C. Hayton.
- 4) Form CA-2, dated May 2, 1966, signed by Camilla C. Nelson.
- 5) Form CA-3, dated May 2, 1966, signed by Camilla C. Nelson.
- 6) Form CA-5, dated March 14, 1966, signed by Elaine M. Hall.

Sincerely yours,

/s/ W. J. Harren

W. J. Harren, Chief
Division of Claims

Enclosures

July 18, 1966

A13-240628

Law Offices
Hayton & Whitlock
505 Arrowhead Avenue
San Bernardino, California 92401

Dear Sir:

Payment of a burial allowance of \$800 in the case of Jewel P. Young, deceased, as authorized by the Federal Employees' Compensation Act, has been approved.

Such payment is being made to Mrs. Elaine M. Hall as Administratrix of the Estate of Jewel P. Young and is being sent to Mrs. Hall at your office. She should receive a check shortly.

There being no showing that Mrs. Young was survived by any person qualifying as a beneficiary under the above Act, no further action by the Bureau is seen to be indicated.

Sincerely yours,

A. B. Schroeder
Assistant Deputy Commissioner

ABS:leb

cc: Mr. Manuel L. Real
U. S. Attorney
U. S. Department of Justice (Civil No. 64-1589-EC, S.D.
Calif., CD)
312 North Spring Street
Los Angeles, California 90012

June 9, 1966

A13-240628

Law Offices
Hayton & Whitlock
505 Arrowhead Avenue
San Bernardino, California 92401

Dear Sir:

We have received reports of the accident resulting in the death of Jewel Edna Young on November 24, 1963 and have determined that the death comes within the scope of the Federal Employees' Compensation Act.

In order that we may disburse any burial allowance indicated, please furnish Form CA-42 or the required certificate covering the appointment of an administrator or executor. The necessary form and instructions were sent to you on April 12, 1966.

We should also be informed whether any claim was made against a third party other than the United States. Any damages so recovered, after deduction of a reasonable attorney's fee and costs of suit, would have to be offset by a compensation entitlement before any disbursement could be made.

Sincerely yours,

A. B. Schroeder
Assistant Deputy Commissioner

ABS:leb

cc: Mr. Manuel L. Real
U. S. Attorney
U. S. Department of Justice (Civil No. 64-1589-EC, S.D.
Calif., CD)
312 North Spring Street
Los Angeles, California 90012

Law Offices
AYTON AND WHITLOCK

505 Arrowhead Avenue
San Bernardino, California 92401
Turner 9-0471

D. Elliott Whitlock
Arthwell C. Hayton
Milton C. Dawson

March 24, 1966

U.S. Department of Labor
Bureau of Employees' Compensation
Washington 25, D.C.

Re: Jewel P. Young, Deceased

Gentlemen:

Enclosed please find a Claim for Compensation on Account of Death, together with an Affidavit in Support of Claim.

The reason that this claim was not filed within one month after death occurred was due to the fact that originally we were advised by the representative from Camp Irwin, that a Complaint should be filed for Wrongful Death in the United States District Court, Southern District of California, Central Division. Such a Complaint was filed, No. 64-1589-EC.

After considerable legal proceedings, it was determined by the United States District Court, that at the time of the death, the decedent, Jewel P. Young, was riding on United States Army bus, because of the fact of her employment and that therefore, plaintiff is subject to the Federal Employees Compensation Act, Title 5, USC, paragraph 757 sub(b), which precluded the court from having jurisdiction. The court further directed that the claim then be filed as herein submitted.

Very truly yours,

s/ Arthwell C. Hayton

ARTHWELL C. HAYTON

ACH:al

cc: Mrs. Elaine M. Hall 25420 East 20th Street,
San Bernardino, Calif.

1. Department Army 2. Bureau or office G-4 Communication Division
(War, Navy, etc.) (Engineer, Navigation, etc.)
3. Place of employment USAADTC Fort Irwin California
(Arsenal, Navy Yard, etc.) (City or town.) (State.)
4. Full name of injured employee Jewel Pruitt Young
5. Time of injury 24 November, 1963 Sunday 10:36 a.m.
(Date.) (Day of week.) (Hour, s. m. or p. m.)
6. Time employee stopped work 22 November, 1963 Friday 8:00 a.m.
(Date.) (Day of week.) (Hour, s. m. or p. m.)
7. Time employee's pay stopped 22 November, 1963 Friday 8:00 a.m.
(Date.) (Day of week.) (Hour, s. m. or p. m.)
8. First day employee was able to resume work _____, 19____ Friday _____
(Date.) (Day of week.) (Hour, s. m. or p. m.)
9. Did employee return to the same work and at same rate of pay after termination of disability? _____
 If so, when? _____ If not, state character of work performed upon return to
 duty and rate paid employee for such work _____
10. Actual time disabled (including Sundays and holidays) _____ days.
11. Number of days for which employee would have received pay had he not been disabled _____ days.
12. If employee was receiving subsistence as part of his wages, was such subsistence furnished during entire period
 of disability? _____ If not, give dates on which subsistence was not furnished _____
13. Has employee been paid for any portion of above absence on account of—
 (a) Annual leave? Earned compensations paid heirs.
(Give exact dates.)
 (b) Sick leave? _____
(Give exact dates.)
 (c) Any other reason _____
14. Nature of injury Skull fracture--instant death
15. Remarks _____

[The following information is to be furnished only in case of death resulting from an injury sustained while in the performance of duty. If death results immediately, or if no Report of Injury has previously been submitted, such report, on Form C. A. 2, should be forwarded herewith.]

REPORT OF DEATH

16. Full name of deceased employee Jewel Pruitt Young
17. Time of death 24 November, 1963 Sunday 10:36 a.m.
(Date.) (Day of week.) (Hour, s. m. or p. m.)
18. Time employee's pay stopped 22 November, 1963 Friday 8:00 a.m.
(Date.) (Day of week.) (Hour, s. m. or p. m.)
19. Place of death Intersection Highway 91 and Fort Irwin Road Barstow (rural) San Bernardino county
(Name of hospital, establishment, etc.) (City or town, and State.)
20. Immediate cause of death Cerebral lacerations due to depressed compound skull fracture.

21. Widow of deceased employee NA
(Give full name.) (Address.)

22. Children of deceased employee under 18 years of age, or those over 18 who are incapable of self-support:

NONE

23. Names, relationship, and addresses of all other persons known to be dependent, in any degree, upon decedent at time of death:

NONE

Signed this 2 day of May, 1966

Fort Irwin, Calif

Carmella C Nelson
 (Official superior.)

(Title.)

The persons to whom compensation may be paid are:

- (a) The widow who was living with or dependent for support upon the deceased employee at the time of his death.
- (b) The widower who was dependent upon the deceased employee at the time of her death.
- (c) The unmarried children under 18 and those over 18 who are incapable of self-support.

- (d) The unmarried children under 18, and those over 18 who are incapable of self-support.
- (e) Parents partially or wholly dependent upon the deceased employee for support.

- (f) Unmarried brothers, sisters, or grandchildren under 18 years of age, and those over 18 who are incapable of self-support, and who were wholly or partially dependent upon the deceased employee.

- (g) Grandparents wholly or partially dependent upon the deceased employee.

Under the law, the term "child" includes stepchildren, adopted children, and posthumous children, but does not include married children. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or sisters. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under 18 years of age or over that age and incapable of self-support. The term "parent" includes step-parents and parents by adoption. The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death. The term "widower" includes only the decedent's husband dependent for support upon her at the time of her death. The terms "adopted" and "adoption" as used in this law include only legal adoption prior to the time of the injury.

The claim should be signed by the person making the claim or his duly authorized representative. There should be given the names and addresses of all persons who may be entitled to compensation on account of death, together with the address of the person making the claim, which should be sworn to by the person entitled to compensation, or by the person authorized to act on his behalf.

Oaths of claimants residing in foreign countries should be made before a United States consular officer or secretary of legation or, if before a local official, a certificate of such United States consular official or secretary of legation showing the authority of the local official to administer oaths should be annexed.

A certified copy of the death certificate should accompany this claim. If, for any reason, it cannot be secured, give full explanation at the bottom of this sheet.

If the relationship to the decedent of any person entitled to claim compensation is that of adoption, a certified copy of the order of adoption should accompany this claim.

Itemized bills in duplicate covering the medical and burial expenses should be submitted with the claim.

1. Full name of deceased employee Jewel Edna Young
2. Age 51 3. Sex F 4. Occupation P. B. X. Operator
5. Was deceased able to speak English? Yes 6. If not, what language? _____
7. Time of injury: (a) November ; (b) 24 (c) 1963 (d) 10:36 p. m.
(Month) (Date) (Year) (Hour, a.m. or p.m.)
8. Place where injury occurred 1st Street & Ft. Irwin Road, Barstow, California
(Place or establishment, as "post office", "navy yard", etc.)
9. Nature and extent of injury Cerebral Laceration due to depressed compound skull fracture due to trauma
10. Date of death November 24, 1963
11. Place where death occurred 1st Street & Ft. Irwin Road, Barstow, California
12. Rate of pay of deceased employee at time of injury which resulted in death, \$ 4240 per year
and subsistence valued at \$ _____ per _____
13. Relationship to the deceased of the person claiming to be entitled to compensation Daughter
14. Did deceased leave any other relatives entitled to compensation? No If so, give names,
addresses, ages, and relationship below.

(See instructions at top of form for classes of persons entitled to compensation)

Name	Address	Age	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I HEREBY CERTIFY that each and every statement set forth above is true to the best of my knowledge and belief.

Name: Elaine M. Hall

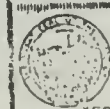
State of California }
County of San Bernardino }

Address: 25420 E. 20th St.
(Street and number)
San Bernardino, Calif.
(City) (State)

Subscribed and sworn to before me this 14th day of March, 1966

Elaine M. Hall
(Signature of official administering oath)

O. A. 6
Revised May 24, 1960



ELEANOR BROOKINS
NOTARY PUBLIC
SAN BERNARDINO COUNTY
CALIFORNIA

Notary Public in and for said County and State

APR 6-1966

AFFIDAVIT IN SUPPORT OF CLAIM under the provisions of the Compensation Act of September 7, 1916, is hereby made by the undersigned:

is hereby made by the undersigned:

Full name of decedent Jewel Edna Young

Name of claimant answering questions below Elaine Marie Hall

1. What was the date of your birth? May 1 1937
(If under legal age, claim should be made by guardian) (Month) (Date) (Year)
2. What is your relationship to decedent? Daughter
3. Were you wholly or partially dependent upon decedent for support at the time of his death? No ✓
4. What was amount contributed by decedent for your support during the twelve months immediately preceding his death? None
5. Did the decedent live with you during the year immediately preceding his death? No If so, what, if anything, did he pay you in money or in work for board and room in addition to the contribution for your support stated above? None
6. If no fixed amount was paid for board and room furnished, what is the fair value of such board and room? None
7. Were you employed during the twelve months immediately preceding the decedent's death? Yes If so, give occupation Nurse's Aide, rate of pay \$1.50 per hour, and total earnings \$240 per month
8. What was your total income from all other sources (except the contribution of decedent and your wages) during the twelve months immediately preceding the death of the decedent? None
9. What persons, if any, were wholly or partially dependent upon you and were supported by you out of this income? (Give relationship of each person.) None
10. If married, and your husband (or wife) was employed during the twelve months immediately preceding the death of the decedent, give age 35, occupation Main Engineer, rate of pay and total earnings \$385.00 per month
11. If married, what, if any, income did your husband (or wife) have other than already stated by you during the twelve months immediately preceding the death of the decedent? None
12. If you claim dependency for support on the decedent at the time of his death, state in detail any other circumstances which would tend to show such dependency None
13. What is your total present income per month from all sources? \$550.00 per month - Husband's wages
14. What property did you own at the time of the death of the decedent? None
Value and location of real estate _____
Value of personal property None
15. What, if any, property in addition to the above do you own now? None
16. What property does your husband (or wife) own other than that described in questions 14 and 15 above? (Give value and location.) None

I HEREBY CERTIFY that each and every statement set forth above is true to the best of my knowledge and belief.
State of California

County of San Bernardino

Name: Elaine M. Hall
Address: 2542 E. 20th St.
(Street and number)
San Bernardino, Calif.
March (City) 66 (State)

Subscribed and sworn to before me this _____ day of _____, 1966

Notary Public in and for said County and State.
(Signature of official administering oath)



ELEANOR BROOKINS
NOTARY PUBLIC
SAN BERNARDINO COUNTY
CALIFORNIA

(Title) (In and for)
13 APR 6-1966

XERO COPY

XERO COPY

XERO COPY

